

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

27 This matter is before the court on the following motions: Plaintiff's Motion for  
28 Protective Order and for Sanctions [Dkt. #19]; Defendants' Motion for a Protective Order and  
29 for sanctions [Dkt. #26] and Plaintiff's Motion for Leave to file an over length brief in response  
30 [Dkt. #39]. The latter request [Dkt. # 39] is GRANTED.

31 At issue is the conduct of both counsel at the depositions of Plaintiffs, including Cristen  
32 Love. Plaintiff claims that defense counsel was intimidating the Plaintiffs, asking them to  
33 identify witnesses and other protest attendees in violation off their First Amendment Rights,  
34 and making them repeat traumatic testimony about the clothes they were wearing, what parts of  
35 their bodies were covered (or not covered) by their clothing, and what they were forced to wear

1 and endure after their arrest. Plaintiff's counsel seeks a protective Order and sanctions against  
2 Defense Counsel.

3 Defense counsel claims that Plaintiff's counsel is not telling the truth about what  
4 happened in the deposition, was actively coaching his clients to appear and act traumatized for  
5 the videographer, and interposing frivolous and improper objections to legitimate discovery.  
6 Defense counsel ended the deposition and now seeks a protective Order and sanctions against  
7 Plaintiff's counsel. He also seeks an Order compelling the Plaintiffs to answer questions about  
8 other witnesses, notwithstanding the Plaintiffs' First Amendment objection.

9 The Court has neither the time nor the inclination to mine the record in an effort to  
10 make factual determinations as to whether one counsel was coaching or the other was  
11 intimidating. Attorneys practicing in this Court are officers of the Court and will conduct  
12 themselves accordingly. Counsel are urged to review and comport themselves in accordance  
13 with the American College of Trial Lawyers' Code of Pretrial and Trial Conduct, 2009, which  
14 can be located on the College's website. The role of an attorney defending his client's  
15 deposition is a passive one. Speaking objections are not proper and are not permitted.  
16 Instructions not to answer are generally improper, with very specific exceptions. A lawyer is  
17 free to "woodshed" his clients prior to the deposition, and during breaks. He is not permitted to  
18 coach during the deposition. The Motions for Sanctions are, at this time, DENIED.

19 If the sorts of unnecessary squabbles outlined in the materials submitted in connection  
20 with these motions continue, future such filings will result in an imposition of sanctions on the  
21 losing party(ies). The Court has in the past reluctantly ordered that depositions occur in the  
22 courthouse, with the Judge available to referee and make on the spot rulings. It is expected that  
23 such a remedy will not be necessary in this case.

1 The remaining issues relate to Motions to Compel and for Protective Orders. First,  
2 Plaintiff's First Amendment rights are not implicated by a defense attorney asking them who  
3 else witnessed the events alleged in the complaint. It does not appear from the record that the  
4 Plaintiffs' "organization" is in any way akin to the NAACP in the 1950s, or that defense  
5 counsel is seeking to use the Plaintiffs' depositions in an underhanded manner to determine the  
6 identity of those members in a way that could conceivably infringe on their right to associate or  
7 speak. Instead, the defense is permitted to ask about witnesses and the identity of other  
8 attendees who may have seen what occurred. The defense is not limited to the witness list  
9 prepared by Plaintiffs' counsel. The Motion to Compel those answers is GRANTED, and the  
10 Motion for a Protective order on that subject is DENIED.

11 Plaintiffs' Motion for a Protective Order on the defense counsel's repeated inquiries  
12 into the clothing they were wearing and forced to remove is also DENIED. However, it is  
13 expected that counsel will use appropriate sensitivity and refrain from engaging in gratuitously  
14 embarrassing or intimidating questioning.

15 IT IS SO ORDERED.

16 Dated this 21<sup>st</sup> day of July, 2010.

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19 RONALD B. LEIGHTON  
20 UNITED STATES DISTRICT JUDGE  
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